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7 SAN BERNARDINO and DEPUTY  
CHRISTOPHER ALFRED

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10  
11 STEFFON BARBER, an individual,  
12 Plaintiff,  
13  
14 v.

15 COUNTY OF SAN BERNARDINO, a  
municipal entity, and DOES 1 through  
16 10, inclusive,  
17 Defendant.

Case No. 5:22-cv-00625-KK-DTBx  
[District Judge, Kenly Kiya Kato,  
Magistrate Judge, David T. Bristow]

**DEFENDANTS' REPLY**  
**STATEMENT OF**  
**UNCONTROVERTED FACTS IN**  
**SUPPORT DEFENDANTS'**  
**MOTION FOR SUMMARY**  
**JUDGMENT**

Judge: Hon. Kenly Kiva Kato  
Date: 11/13/2025  
Time: 9:30 a.m.  
Crtrm.: 3, 3<sup>rd</sup> Floor

Trial Date: 1/26/26

No.	Defendants' Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
1	<p>At approximately 11:12 pm, the San Bernardino County Sheriff's Dispatch Department ("Dispatch") received a call from Maria Gallo ("Ms. Gallo") and Joseph Cocchi ("Mr. Cocchi.") in Adelanto.</p> <p>Ex. B. Ex. D, p. 1 (23:12:53)</p>	Undisputed
2	<p>Ms. Gallo stated that their neighbor is "going crazy" and wouldn't let them enter their residence. She said the neighbor was asking her to take him somewhere. She was trying to park in her driveway and he keeps trying to open her doors.</p> <p>Ex. A at p. 32:4-7, 14-17 Ex. B at 00:23-00:39; 02:47-02:51</p>	<p>Objections: Hearsay (Federal Rules of Evidence ("FRE") 801, 802); Relevance (FRE 401, 402); FRE 403.</p> <p>Otherwise, undisputed.</p>
<p><b>Defendants' Response:</b> Defendants objects to Plaintiff's objections because Ms. Gallo is identified as a potential witness in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). Furthermore, Plaintiff does not specify the reasons why this is not relevant or the prejudicial value outweighs the probative value.</p>		
3	<p>Ms. Gallo stated that the neighbor lived on the same property but behind them at 12013.</p> <p>Ex. B at 00:53-01:08</p>	<p>Objection: Hearsay (FRE 801, 802).</p> <p>Otherwise, undisputed.</p>

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2	<b>Defendants' Response:</b> Defendants objects to Plaintiff's objections because Ms.	
3	Gallo is identified as a potential witness in Defendants' Initial Disclosures pursuant	
4	to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B).	
5	Furthermore, Plaintiff does not specify the reasons why this is not relevant or the	
6	prejudicial value outweighs the probative value.	
7	4	Ms. Gallo provided a description of Plaintiff as a black male, last seen wearing a white t-shirt and jeans.
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9		Ex. A at p. 34:14-21
10		Ex. B at 01:18-01:46
11	5	Ms. Gallo then stated that he was taking things out of the vehicle.
12		Objections: Hearsay (FRE 801, 802).Relevance (FRE 401, 402);
13		vague and ambiguous.
14		Ex. B at 01:58-2:00
15		Otherwise, undisputed.
16	<b>Defendants' Response:</b> Defendants objects to Plaintiff's objections because Ms.	
17	Gallo is identified as a potential witness in Defendants' Initial Disclosures pursuant	
18	to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B).	
19	Furthermore, Plaintiff does not specify the reasons why this is not relevant or the	
20	prejudicial value outweighs the probative value.	
21	6	Ms. Gallo stated that she believe he was possibly under the influence of alcoholic beverages and/or drugs.
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23		Ex. B at 02:27-02:30
24		Objections: Hearsay (FRE 801, 802);
25		Relevance (FRE 401, 402); FRE 403
26		calls for speculation
27		Disputed to the extent that Deputy Alfred did not have any information that Mr. Barber was under the influence of drugs or alcohol.
28		"Exhibit 1" (Alfred Depo) to the Declaration of Renee V.

1		Masongsong at 31:23-25.
2	<b>Defendants' Response:</b> Defendants objects to Plaintiff's objections because Ms.	
3	Gallo is identified as a potential witness in Defendants' Initial Disclosures pursuant	
4	to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B).	
5	Furthermore, Plaintiff does not specify the reasons why this is not relevant or the	
6	prejudicial value outweighs the probative value.	
7	Defendants object to Plaintiffs' dispute because the material cited do not establish	
8	the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c)..	
9	7	Ms. Gallo reported that Plaintiff had a black Chevy Trailblazer.
10		Undisputed
11		Ex. B at 03:30-03:37
12	8	Dispatch transmitted the report over the air that Plaintiff was not letting Ms. Gallo and Mr. Cocchi enter their residence and that Plaintiff lives behind Ms. Gallo and Mr. Cocchi.
13		Objections: Hearsay (FRE 801, 802); Relevance (FRE 401, 402); FRE 403.
14		Otherwise, undisputed.
15		Ex. D at p. 1 (23:12:53-23:13:58)
16		Ex. E (00:15-00:30)
17	<b>Defendants' Response:</b> Defendants objects to Plaintiff's objections because	
18	Plaintiff's hearsay objection has no grounds under Fed. R. Civ. Pro. 56(c)(1)(B).	
19	Furthermore, Plaintiff does not specify the reasons why this is not relevant or the	
20	prejudicial value outweighs the probative value.	
21	9	Deputy Alfred copied.
22		Undisputed.
23		Ex. D at p. 1 (23:14:25; 2316:01)
24		Ex. E (00:34)
25	10	Dispatch transmitted over the air that
26		Objections: Vague and ambiguous as

1	Plaintiff lives behind the reporting	to who was wearing the white shirt
2	parties and the neighbor was wearing	and jeans.
3	white shirt and jeans.	
4	Ex. D at p. 1 (23:14:46)	Otherwise, undisputed.
5	Ex. E (00:58-1:08)	
6	11	Objections: Hearsay (FRE 801, 802);
7	Dispatch also transmitted over the air	Relevance (FRE 401, 402); FRE 403;
8	that Plaintiff was possibly	calls for speculation.
9	intoxicated.	
10	Ex. D at p. 1 (23:15:38)	Disputed to the extent that Deputy
11		Alfred did not have any information
12		that Mr. Barber was under the
13		influence of drugs or alcohol.
14		“Exhibit 1” (Alfred Depo) at 31:23-
15		25.
16	<b>Defendants’ Response:</b> Defendants objects to Plaintiff’s objections because	
17	Plaintiff’s hearsay objection has no grounds under Fed. R. Civ. Pro. 56(c)(1)(B).	
18	Furthermore, Plaintiff does not specify the reasons why this is not relevant or the	
19	prejudicial value outweighs the probative value.	
20	Defendants object to Plaintiffs’ dispute because the material cited do not establish	
21	the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).	
22	12	Objections: Vague and ambiguous.
23	Shortly after 11:19 pm, Deputy	
24	Christopher Alfred arrived on the	Otherwise, undisputed that Deputy
25	scene. He was the first to arrive and	Alfred was the only deputy on scene
26	he was the only deputy to arrive.	at the time of the shooting.
27	Ex. C at 00:27	
28	Ex. D at p. 2 (23:19:45)	
	Ex. E at 02:39	

13	Ms. Gallo and Mr. Cocchi who advised him that Plaintiff was threatening them and slamming his hands on the car, striking the hood of their vehicle.  Ex. A at p. 31:6-11 Ex. C at 01:13-01:25; 02:14-02:15	Objections: Hearsay (FRE 801, 802); Relevance (FRE 401, 402); FRE 403.  Undisputed.
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**Defendants' Response:** Defendants object to Plaintiff's objections because Ms. Gallo and Mr. Cocchi are identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). Furthermore, Plaintiff does not specify the reasons why this is not relevant or the prejudicial value outweighs the probative value.

14	Mr. Cocchi told Deputy Alfred that it was our neighbor behind us.  Ex. C at 00:30-00:32	Objections: Hearsay (FRE 801, 802).  Otherwise, undisputed.
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**Defendants' Response:** Defendants object to Plaintiff's objection because Mr. Cocchi is identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B).

15	Mr. Cocchi stated that Plaintiff might have a gun but did not see one.  Ex. A at p. 31:9-15 Ex. C at 01:35-02:08	Objections: Hearsay (FRE 801, 802); Relevance (FRE 401, 402); calls for speculation; FRE 403.  Otherwise, undisputed.
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**Defendants' Response:** Defendants object to Plaintiff's objection because Mr. Cocchi is identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). Furthermore, Plaintiff does not specify the reasons why this is not relevant or the prejudicial value outweighs the probative value.

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2	16	Mr. Cocchi told Deputy Alfred that they were scared.
3		Objections: Hearsay (FRE 801, 802); Relevance (FRE 401, 402)
4		Ex. C at 02:33
5		Undisputed.
6	<b>Defendants' Response:</b> Defendants object to Plaintiff's objection because Mr. Cocchi is identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). Furthermore, Plaintiff does not specify the reasons why this is not relevant or the prejudicial value outweighs the probative value.	
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8	17	Deputy Alfred believed that Ms. Gallo and Mr. Cocchi feared for their safety.
9		Objections: Relevance (FRE 401, 402) to the extent that this is not the standard for using deadly force.
10		Ex. A at p. 31:8
11		Otherwise, undisputed.
12	<b>Defendant's Response:</b> Defendant objects to Plaintiff's objections as The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983 asks the trier of fact to consider, <i>inter alia</i> , (1) whether the [plaintiff] [decedent] posed an immediate threat to the safety of the officer[s] or to others; and (2) whether there was probable cause for a reasonable officer to believe that the suspect had committed a crime involving the infliction or threatened infliction of serious physical harm.	
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14	18	Deputy Alfred walked up the driveway to talk to Mr. Plaintiff
15		Undisputed.
16		Ex. A at p. 35:6-8
17		Ex. C at 02:34-02:40
18	19	The surface of the driveway was gravel and dirt.
19		Disputed to the extent that the Trailblazer was parked on a low-friction surface consisting of dirt and gravel.
20		Ex. A at p. 17:25-18:2; 58:1-3;
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	Exhibits 2-3, 8 to Ex. 1	<p>Morales Decl. at ¶ 10.</p> <p>The Trailblazer could not have moved as soon as the accelerator was engaged because the rear tires experienced a loss of traction, and the front tires had to overcome static friction. The surface composition created a mechanical limitation that prevented rapid acceleration and restricted maximum achievable speeds, regardless of accelerator input.</p> <p>Morales Decl. at ¶ 10.</p>
<p><b>Defendant's Response:</b> Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).</p>		
20	<p>The driveway was a shared driveway between Ms. Gallo and Mr. Plaintiff.</p> <p>Ex. A at p. 32:9-10</p>	Undisputed.
21	<p>The driveway was narrow, equivalent to about one length of a car lane.</p> <p>Ex. A at p. 19:20-23; Exhibits 2-3, 8 to the Ex. 1.</p>	<p>Disputed.</p> <p>Deputy Alfred had ample time and room to move out of the path of the Trailblazer. Morales Decl. at ¶ 7.</p> <p>The driveway width was approximately 15 feet and 7 inches at the north end and 13 feet, 8 inches at the south end. DeFoe Decl. at ¶ 9(e); Morales Decl. at ¶ 7.</p> <p>After the shooting, the left-front tire</p>



		of the Trailblazer was located approximately 8 feet west of the chain-link fence, and the left-rear tire was positioned about 6 feet west of the same fence. Morales Decl. at ¶ 9.
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**Defendant's Response:** Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

22	In order to leave out of the driveway you have to reverse because it's one way in and one way out.  Ex. A at p. 49:21-50-2; Exhibits 2-5 to Ex. A.	Undisputed.
23	It was dark outside and there was very limited ambient lighting from the street posting.  Ex. A at p. 14:11-19	Undisputed.
24	On one side of the driveway, to the left (the east side) was a chain-link fence. On the other side of the driveway (the west side) was a picket fence.  Ex. A at p. 48:5-13; 58:6-11; Exhibits 3, 4	Disputed to the extent that there was an opening, three to four feet from the stucco on the west side. Ex. A at p. 53:11-14.

**Defendants' Response:** Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

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2	25	Alfred used a flashlight, light source
3		illuminated between the ground and
4		him.
5		Ex. A at p: 15:1-11
6	26	The colors of the uniform of the San
7		Bernardino County Sheriff's
8		Department are a tan top and green
9		pants.
10		Ex. A at p. 56:16-57:12; Exhibit 1 to
11		Ex. A
12		Ex. G at p. 39:24-40
13	27	Deputy Alfred dropped the face
14		covering towards his neck.
15		Ex. A at pp. 56:25-57:12; Exhibit 1
16		to the Ex. A.
17	28	Plaintiff's vehicle was parked in the
18		driveway and the front was faced
19		south.
20		Ex. A at p. 17:17-21; Exhibit 2 to
21		Ex. 1
22	29	The cargo hatch was open.
23		Ex. A at p. 58:15-59:2, Exhibit 2 to
24		Ex. A
25		Ex. G at p. 46:14-19
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27	30	Deputy Alfred stood approximately
28		10 feet from the back of Plaintiff's

1	vehicle. on the north side of	At the time of the first shot, Deputy
2	Plaintiff's vehicle when he started	Alfred was approximately 51 feet to
3	giving commands to Plaintiff.	the rear of the Trailblazer.
4	Ex. A at p. 72:1-7; 35:15-24	Morales Decl. at ¶ 16.
5		At the time of the last shot, Deputy
6		Alfred was approximately 21 feet to
7		the rear of the Trailblazer.
8		Morales Decl. at ¶ 16.

**Defendants' Response:** Defendant objects to Plaintiff's dispute because Morales is a mechanical engineer and is both not qualified to make this conclusion and this conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. *See* Fed.R.Civ.Pro. 56; FRE 702.

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12	31	Deputy Alfred stayed behind the
13		Trail Blazer because in the event of
14		fire fight or an exchange in gunfire,
15		Plaintiff's vehicle could serve as a
16		barrier.
17		Ex. A at p. 72:1-9.
18		Disputed that a reasonable police
19		officer would have employed these
20		tactics.
21		After seeing the reverse lights come
22		on, Deputy Alfred failed to step out
23		of the way.
24		"Exhibit 1" (Alfred Depo) at 41:1-3,
25		49:8-50:2.
26		Deputy Alfred did not attempt to
27		move out of the way to the left or to
28		the right before he fired the shots.
		"Exhibit 1" (Alfred Depo) at 48:2-5.
		A reasonable officer in Deputy
		Alfred's position would have
		immediately moved to a position of
		cover and
		formulated an effective and safe
		tactical plan.

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		<p>DeFoe Decl. at ¶ 10(c).</p> <p>At the time of this incident, Deputy Alfred had been trained not to tactically position himself in a bad spot, if he can avoid it, with respect to moving vehicles.</p> <p>“Exhibit 1” (Alfred Depo) at 11:17-22.</p> <p>The reporting party did not report that they saw Mr. Barber with a weapon or that Mr. Barber said he had a weapon.</p> <p>“Exhibit 1” (Alfred Depo) at 31:12-18.</p> <p>Deputy Alfred never saw a gun or other weapon either on Mr. Barber or in the Trailblazer at any time.</p> <p>“Exhibit 1” (Alfred Depo) at 13:7-18.</p> <p>Based on Deputy Alfred’s experience, a reporting party might state that a person has a gun in order to expedite law enforcement response, and then it often turns out that the person did not have a gun.</p> <p>“Exhibit 1” (Alfred Depo) at 34:1-7.</p>
<p><b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).</p>		

1	32	To the left (east) was the chain-link fence approximately three to four feet away.	Objection: Vague and ambiguous.
2			Otherwise, undisputed that there was
3			approximately four feet of room on
4		Ex. A at p. 17:22-24; 21:8-11	the left side of the Trailblazer.
5	33	To the right (west) was the wall of the residence, approximately three to four feet away.	Objection: vague and ambiguous.
6			Otherwise, undisputed that there was
7			approximately four feet of room on
8			the right side of the Trailblazer.
9		Ex. A at p. 20:17-25; 21:1-4	
10	34	Deputy Alfred gave Plaintiff verbal commands. Multiple times, he told Plaintiff to come towards him and to display his hands.	Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred.
11			“Exhibit 2” (Barber Depo) to the Declaration of Renee V.
12		Ex. A at p. 37:10-38:12; 39:4-10.	Masongsong at 42:6-43:9, 48:13-19.
13		Ex. C at 02:39-03:02	
14		Ex. G at p. 43:2-5; 14-17	Prior to the shooting, Deputy Alfred did not identify himself as a police officer. “Exhibit 1” (Alfred Depo) at 38:20-22.
15			Mr. Barber heard a voice but did not see anyone in the driveway.
16			“Exhibit 2” (Barber Depo) at 44:19-45:5.
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18			When Mr. Barber heard Deputy Alfred’s voice, he thought it was his neighbor speaking. “Exhibit 2” (Barber Depo) at 35:10-20.
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**Defendants’ Response:** Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

35	<p>Plaintiff did not comply and instead told Deputy Alfred to show his hands to Plaintiff and then told Deputy Alfred to “back up.”</p> <p>Ex. A at p. 39:8-10. Ex. C at 03:02-03:03 Ex. G at p. 43:3-5</p>	<p>Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. “Exhibit 2” (Barber Depo) at 42:6-43:9, 48:13-19.</p> <p>Prior to the shooting, Deputy Alfred did not identify himself as a police officer. “Exhibit 1” (Alfred Depo) at 38:20-22.</p> <p>Mr. Barber heard a voice but did not see anyone in the driveway. “Exhibit 2” (Barber Depo) at 44:19-45:5.</p> <p>When Mr. Barber heard Deputy Alfred’s voice, he thought it was his neighbor speaking. “Exhibit 2” (Barber Depo) at 35:10-20.</p>
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**Defendants’ Response:** Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

36	<p>Plaintiff also heard Deputy Alfred say “Don’t reach into your vehicle” and then Plaintiff intentionally reached into his vehicle.</p>	<p>Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred.</p>
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	Ex. G at p. 44	<p>“Exhibit 2” (Barber Depo) at 42:6-43:9, 48:13-19.</p> <p>Prior to the shooting, Deputy Alfred did not identify himself as a police officer. “Exhibit 1” (Alfred Depo) at 38:20-22.</p> <p>Mr. Barber heard a voice but did not see anyone in the driveway. “Exhibit 2” (Barber Depo) at 44:19-45:5.</p> <p>When Mr. Barber heard Deputy Alfred’s voice, he thought it was his neighbor speaking. “Exhibit 2” (Barber Depo) at 35:10-20.</p>
<p><b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).</p>		
37	<p>At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his commands.</p> <p>Ex. C at 03:04-03:08 Ex. D at p. 2 (23:22:31)</p>	<p>Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. “Exhibit 2” (Barber Depo) at 42:6-43:9, 48:13-19.</p> <p>Prior to the shooting, Deputy Alfred did not identify himself as a police officer. “Exhibit 1” (Alfred Depo) at 38:20-22.</p> <p>Mr. Barber heard a voice but did not</p>



1		see anyone in the driveway.
2		“Exhibit 2” (Barber Depo) at 44:19-
3		45:5.
4		When Mr. Barber heard Deputy
5		Alfred’s voice, he thought it was his
6		neighbor speaking. “Exhibit 2”
7		(Barber Depo) at 35:10-20.
8	<b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the	
9	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
10	R. Civ. P. 56(c).	
11	38	Disputed to the extent that when
12	Deputy Alfred ordered Plaintiff not	Deputy Alfred was attempting to
13	to enter his vehicle and told him to	contact Mr. Barber in his driveway
14	come towards him.	prior to the shooting, Mr. Barber
15	Ex. C at 03:09-03:11	could not see Deputy Alfred.
16	Ex. G at p. 43:14-15; 50:18-51:2	“Exhibit 2” (Barber Depo) at 42:6-
17		43:9, 48:13-19.
18		Prior to the shooting, Deputy Alfred
19		did not identify himself as a police
20		officer. “Exhibit 1” (Alfred Depo) at
21		38:20-22.
22		Mr. Barber heard a voice but did not
23		see anyone in the driveway.
24		“Exhibit 2” (Barber Depo) at 44:19-
25		45:5.
26		When Mr. Barber heard Deputy
27		Alfred’s voice, he thought it was his
28		neighbor speaking. “Exhibit 2”
		(Barber Depo) at 35:10-20.

	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).	
39	The vehicle was on and idling when Plaintiff got into the car.  Ex. A at p. 67:8-10; 71:21-23; 74:1-10 Ex. G at p. 46:21-47:3	Undisputed.
40	Deputy Alfred was still about 10 feet from the back of the vehicle.  Ex. A at p. 40:23-25.	Disputed.  At the time of the first shot, Deputy Alfred was approximately 51 feet to the rear of the Trailblazer. Morales Decl. at ¶ 16.  At the time of the last shot, Deputy Alfred was approximately 21 feet to the rear of the Trailblazer. Morales Decl. at ¶ 16.
41	Deputy Alfred believed that Plaintiff's purpose of getting into the car was to leave.  Ex. A at p. 40:10-14; 49:14-16.	Disputed that a reasonable police officer would have employed these tactics.  After seeing the reverse lights come on, Deputy Alfred failed to step out of the way. "Exhibit 1" (Alfred Depo) at 41:1-3, 49:8-50:2.  Deputy Alfred did not attempt to move out of the way to the left or to

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		<p>the right before he fired the shots. “Exhibit 1” (Alfred Depo) at 48:2-5.</p> <p>At the time of this incident, Deputy Alfred had been trained not to tactically position himself in a bad spot, if he can avoid it, with respect to moving vehicles. “Exhibit 1” (Alfred Depo) at 11:17-22.</p> <p>A reasonable officer in Deputy Alfred’s position would have moved to a position of cover and formulated an effective and safe tactical plan. DeFoe Decl. at ¶ 10(c).</p>
<p><b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).</p>		
42	<p>Deputy Alfred observed the reverse lights of Plaintiff’s vehicle come on.</p> <p>Ex. A at p. 40:20-22 Ex. G at p. 47:4-8</p>	<p>Disputed that a reasonable police officer would have employed these tactics.</p> <p>After seeing the reverse lights come on, Deputy Alfred failed to step out of the way. “Exhibit 1” (Alfred Depo) at 41:1-3, 49:8-50:2.</p> <p>Deputy Alfred did not attempt to move out of the way to the left or to the right before he fired the shots.</p>

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		<p>“Exhibit 1” (Alfred Depo) at 48:2-5.</p> <p>A reasonable officer in Deputy Alfred’s position would have immediately moved to a position of cover and formulated an effective and safe tactical plan. DeFoe Decl. at ¶ 10(c).</p> <p>At the time of this incident, Deputy Alfred had been trained not to tactically position himself in a bad spot, if he can avoid it, with respect to moving vehicles. “Exhibit 1” (Alfred Depo) at 11:17-22.</p> <p>Deputy Alfred had ample time and room to move out of the path of the Trailblazer. Morales Decl. at ¶ 7; DeFoe Decl. at ¶ 9.</p>
42	<p><b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).</p>	
43	<p>Deputy Alfred had no immediate indication that the vehicle would reverse until Plaintiff entered it and the reverse lights came on.</p> <p>Ex. A at p. 49:4-7</p>	<p>Disputed.</p> <p>Defendants’ Fact No. 41.</p> <p>Ms. Gallo stated that Mr. Barber was asking her to take him somewhere,</p>

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		<p>presumably because he wanted to leave. Ex. A at p. 32:4-7, 14-17 Ex. B at 00:23-00:39; 02:47-02:51</p> <p>Disputed that a reasonable police officer would have employed these tactics.</p> <p>After seeing the reverse lights come on, Deputy Alfred failed to step out of the way. “Exhibit 1” (Alfred Depo) at 41:1-3, 49:8-50:2.</p> <p>Deputy Alfred did not attempt to move out of the way to the left or to the right before he fired the shots. “Exhibit 1” (Alfred Depo) at 48:2-5.</p> <p>A reasonable officer in Deputy Alfred’s position would have immediately moved to a position of cover and formulated an effective and safe tactical plan. DeFoe Decl. at ¶ 10(c).</p> <p>At the time of this incident, Deputy Alfred had been trained not to tactically position himself in a bad spot, if he can avoid it, with respect to moving vehicles. “Exhibit 1” (Alfred Depo) at 11:17-22.</p> <p>Deputy Alfred had ample time and room to stay out of the path of the</p>
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1		Trailblazer.
2		Morales Decl. at ¶ 7.
3	<b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the	
4	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
5	R. Civ. P. 56(c).	
6	44	Objection: vague and ambiguous as
7	The engine of the vehicle revved and	to “revved.”
8	then the car started moving in	
9	reverse.	
10	Ex. A at p. 49.	Disputed to the extent that the
11	Ex. C: 03:13-03:14	Trailblazer was parked on a low-
12	Ex. G at p. 47:4-15; 48:17-22	friction surface consisting of dirt and
13		gravel. The surface conditions
14		reveals a mixed composition driving
15		surface that significantly impacted
16		vehicle traction capabilities.
17		Morales Decl. at ¶ 10.
18		
19		The Trailblazer could not have
20		moved as soon as the accelerator was
21		engaged because the rear tires
22		experienced a loss of traction, and
23		the front tires had to overcome static
24		friction. The surface composition
25		created a mechanical limitation that
26		prevented rapid acceleration and
27		restricted maximum
28		achievable speeds, regardless of
		accelerator input.
		Morales Decl. at ¶ 10.
		Disputed to the extent that The
		Trailblazer was either not in motion
		when Deputy Alfred started firing his
		shots or was moving at a slow speed

1		of under 1 mile per hour. At the time
2		of the first shot, the Trailblazer had
3		moved backwards less than one foot.
4		At the time of the second shot, the
5		vehicle still had not traveled
6		backwards more than one foot. At
7		the time of the last shot, the vehicle
8		had started decelerating and was
9		moving at approximately under 1
10		mile per hour before coming to rest.
11		Morales Decl. at ¶ 11.
12	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
13	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
14	R. Civ. P. 56(c).	
15	45	Deputy Alfred called out over the
16		radio that Plaintiff was trying to
17		reverse.
18		Ex. C at 03:13-03:15
19		Undisputed
20	46	The tires gained traction on the hard
21		packed dirt.
22		Ex. 2 to Ex. A.
23		Ex. C at 03:14:82- 03:16:277
24		Disputed.
25		The Trailblazer was parked on a low-
26		friction surface consisting of dirt and
27		gravel. The surface conditions
28		reveals a mixed composition driving
		surface that significantly impacted
		vehicle traction capabilities.
		Morales Decl. at ¶ 10.
		The Trailblazer could not have
		moved as soon as the accelerator was
		engaged because the rear tires
		experienced a loss of traction, and



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		<p>the front tires had to overcome static friction. The surface composition created a mechanical limitation that prevented rapid acceleration and restricted maximum achievable speeds, regardless of accelerator input. Morales Decl. at ¶ 10.</p> <p>Disputed to the extent that The Trailblazer was either not in motion when Deputy Alfred started firing his shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot. At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11.</p>
<p><b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).</p>		
47	<p>Deputy Alfred believed that Plaintiff’s intention in reversing the vehicle was to harm him.</p> <p>Ex. A at p. 49:14-20</p>	<p>Disputed that a reasonable police officer would have formed this belief.</p> <p>Deputy Alfred had ample time and room to move out of the path of the Trailblazer.</p>

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		<p>Morales Decl. at ¶ 7; DeFoe Decl. at ¶ 9.</p> <p>Disputed to the extent that the Trailblazer was parked on a low-friction surface consisting of dirt and gravel. The surface conditions reveals a mixed composition driving surface that significantly impacted vehicle traction capabilities. Morales Decl. at ¶ 10.</p> <p>The Trailblazer could not have moved as soon as the accelerator was engaged because the rear tires experienced a loss of traction, and the front tires had to overcome static friction. The surface composition created a mechanical limitation that prevented rapid acceleration and restricted maximum achievable speeds, regardless of accelerator input. Morales Decl. at ¶ 10.</p> <p>When Mr. Barber’s vehicle rolled backwards, it moved in a straight line. The resting position of the vehicle after the incident shows that the wheels are straight, meaning that Mr. Barber never changed the direction of the vehicle. Morales Decl. at ¶ 13.</p> <p>Disputed to the extent that The Trailblazer was either not in motion</p>
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		<p>when Deputy Alfred started firing his shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot. At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11.</p> <p>The significance of the vehicle's maximum speed of 3.4 miles per hour becomes apparent when compared to normal human locomotion speeds. Based on standard biomechanical data, the average human walking speed ranges from 3.0 to 3.5 miles per hour, meaning the vehicle's maximum speed was equivalent to or slightly faster than a person walking at normal pace. This comparison is technically relevant because it demonstrates that any individual in the vehicle's path would have had ample opportunity to move out of the way, given that the vehicle was not traveling faster than a human could walk. Morales Decl. at ¶ 14.</p>
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2	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
3	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
4	R. Civ. P. 56(c).	
5	48	<p>A couple of feet ahead of Deputy Alfred was an opening, three to four feet from the stucco on the west side.</p> <p>Ex. A at p. 53:11-14.</p> <p>Objections: vague and ambiguous as to time.</p> <p>Disputed.</p> <p>Deputy Alfred had ample time and room to move out of the path of the Trailblazer. Morales Decl. at ¶ 7.</p> <p>At the time of the first shot, Deputy Alfred was approximately 51 feet to the rear of the Trailblazer. Morales Decl. at ¶ 16.</p> <p>At the time of the last shot, Deputy Alfred was approximately 21 feet to the rear of the Trailblazer. Morales Decl. at ¶ 16.</p>
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20	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
21	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
22	R. Civ. P. 56(c).	
23	49	<p>In order to get to the opening on the west side to him, Alfred would have had to move closer to the car.</p> <p>Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A</p> <p>Objection: vague and ambiguous.</p> <p>Disputed.</p> <p>Deputy Alfred had ample time and room to move out of the path of the</p>
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1		Trailblazer.
2		Morales Decl. at ¶ 7; DeFoe Decl. at
3		¶ 9.
4		At the time of the first shot, Deputy
5		Alfred was approximately 51 feet to
6		the rear of the Trailblazer.
7		Morales Decl. at ¶ 16.
8		At the time of the last shot, Deputy
9		Alfred was approximately 21 feet to
10		the rear of the Trailblazer.
11		Morales Decl. at ¶ 16.
12	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
13	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
14	R. Civ. P. 56(c).	
15	50	Deputy Alfred fired six shots at
16		Plaintiff.
17		Ex. A at p. 7:11-12; 13:5-6 Ex. B at
18		03:47-49
19		Ex. C at 03:16-03:19
20		Undisputed.
21	51	After Deputy Alfred's last shot, the
22		truck moved back approximately one
23		foot and stopped after making
24		contact with an area by the wall to
25		the west.
26		Ex. A at 44:24-45:6; 53:2-4
27		Disputed.
28		After the shooting, Mr. Barber's foot
		was on the brake pedal.
		"Exhibit 1" (Alfred Depo) at 53:24-
		54:3.
		The vehicle came to a stop because
		Mr. Barber stepped on the brakes.
		The evidence indicates that Mr.

1		Barber applied the brakes mildly, as
2		opposed to slamming on the brakes.
3		The vehicle gradually decelerated
4		after the brakes were pressed while
5		remaining in reverse gear.
6		Morales Decl. at ¶ 15.
7		
8		When the deputies were removing
9		Mr. Barber from the Trailblazer after
10		the shooting, the Trailblazer moved
11		backwards an additional two to three
12		feet.
13		Morales Decl. at ¶ 20.
14	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
15	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
16	R. Civ. P. 56(c).	
17	52. Deputy Alfred called out over	Undisputed that this is Alfred's
18	the radio that Plaintiff tried to	testimony.
19	reverse into him and requested	
20	medical services.	
21	Ex. B at 03:37 Ex. C at 23:22:44	
22	53 Plaintiff was injured in the head.	Disputed to the extent that Plaintiff
23	Ex. A at p. 52:12-13	was shot in the head.
24	Ex. G at p. 52:18-22	
25	54 Because the car was in reverse gear,	Undisputed.
26	once Plaintiff was extracted from the	
27	vehicle for medical services, the	
28	vehicle slowly went in reverse	

	because it was in reverse gear and one of Deputy Alfred's partners placed it park to stop the vehicle from reversing.  Ex. A at p. 52:18-23; 53:24-54:3 Ex. C at 09:27-09:30	
55	Plaintiff was arrested and booked for PC 245(c), assault with a deadly weapon on a peace officer.  Ex. F	Disputed to the extent that Mr. Barber was not convicted of this offence. "Ex. I."
<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).		
56	Plaintiff was charged with the attempted murder of Deputy Alfred and Penal Code section 245(a) and convicted of Penal Code 245(a).  Ex. H; Ex. K	Disputed to the extent that Mr. Barber was charged with attempted murder of a peace officer, but was unanimously found not guilty by jurors. "Ex. I."
<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. R. Civ. P. 56(c).		
57	Plaintiff was sentenced to 14 years.  Ex. I	Disputed to the extent that Mr. Barber's sentencing included a prior and unrelated probation violation regarding an assault on a peace officer. Mr. Barber was found not guilty on attempted murder and assault on a peace officer as it relates



1		to Deputy Alfred.
2		“Ex. I.”
3	<b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the	
4	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
5	R. Civ. P. 56(c).	
6	58	Deputy Alfred received training at
7		the San Bernardino County Sheriff’s
8		Academy for use of force, including
9		use of deadly force, the policy
10		related to the use of deadly force,
11		and the policy related to shooting at
12		moving vehicles.
13		Ex. A, p. 10:2-13:4;
14		23:23-26:1; 89:14-92:12
15	59	Deputy Alfred has used the firearm
16		in the field before the date of the
17		April 27, 2021 shooting.
18		Ex. A, p. 25:25-29:17
19	60	The San Bernardino County Sheriff’s
20		Department Manuel provides that
21		“[t]he ‘reasonableness’ of the force
22		used shall be evaluated from the
23		perspective of a reasonable safety
24		member in the same situation, based
25		on the totality of the circumstances
26		known or perceived by the safety
27		member at the time, rather than with
28		the benefit of hindsight. The totality
		of the circumstances shall account
		for occasions when safety members
		Undisputed.
		Undisputed.
		Undisputed that this is the County
		Policy.
		Disputed to the extent that at the time
		of this incident, Deputy Alfred
		understood that the County of San
		Bernardino’s policy directed that
		deputies “shall not” shoot at a
		moving vehicle.
		“Exhibit 1” (Alfred Depo) at 10:14-
		11:22.

1	may be forced to make quick	
2	judgments about using force, and the	
3	amount of force that is necessary, in	
4	circumstances that are tense,	
5	uncertain and rapidly evolving.”	
6	Ex. L at COSB000672-	
7	COSB000673.	

**Defendants’ Response:** Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

11	61	The San Bernardino County Sheriff’s	Undisputed that this is the County
12		Department Manuel provides that the	Policy.
13		evaluation of whether a deputy has	Disputed to the extent that at the time
14		used reasonable force shall take into	of this incident, Deputy Alfred
15		a consideration a number of factors	understood that the County of San
16		including, but not limited to	Bernardino’s policy directed that
17		“behavior of the individual being	deputies “shall not” shoot at a
18		confronted (as reasonably perceived	moving vehicle.
19		by [him] at the time”; “[t]he	“Exhibit 1” (Alfred Depo) at 10:14-
20		availability of options (what	11:22.
21		resources are reasonably available to	
22		the deputy under the circumstances);	
23		“[t]he training and experience of the	
24		deputy”; “[t]he potential for injury to	
25		citizens, [and himself]”; and “[t]he	
26		risk of escape.”	
27		Ex. L at COSB000673-4.	

**Defendants’ Response:** Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

<p>1 62</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>The San Bernardino County Sheriff's Department Manuel provide that "[a]lternatives to force are not required by a member when the member reasonably believes that immediate action must be taken to prevent injury to themselves, another member of public."</p> <p>Ex. L at COSB000675.</p>	<p>Undisputed that this is the County Policy.</p> <p>Disputed to the extent that at the time of this incident, Deputy Alfred understood that the County of San Bernardino's policy directed that deputies "shall not" shoot at a moving vehicle.</p> <p>"Exhibit 1" (Alfred Depo) at 10:14-11:22.</p> <p>Disputed to the extent that Deputy Alfred had ample time and room to move out of the path of the Trailblazer rather than shooting. Morales Decl. at ¶ 7; DeFoe Decl. at ¶ 9.</p>
<p>16 <b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the</p> <p>17 material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.</p> <p>18 R. Civ. P. 56(c). Defendant also objects because Morales is a mechanical engineer</p> <p>19 and is both not qualified to make this conclusion and this conclusion is the result of</p> <p>20 the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i></p> <p>21 Fed.R.Civ.Pro. 56; FRE 702. Defendant further objects because DeFoe's conclusion</p> <p>22 is the result of the unreliable application of the facts, ignoring direct evidence to the</p> <p>23 contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and</p> <p>24 704.</p>		
<p>24 63</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>The San Bernardino County Sheriff's Department Manuel provides "[a] safety member may use lethal force to protect himself or others from what he reasonably believes to be an immediate threat of death or</p>	<p>Undisputed that this is the County Policy.</p> <p>Disputed to the extent that at the time of this incident, Deputy Alfred understood that the County of San</p>

1	serious bodily injury ... [or] to	Bernardino's policy directed that
2	accomplish the arrest or prevent the	deputies "shall not" shoot at a
3	escape of a suspected felon, when	moving vehicle.
4	the member has probable cause to	"Exhibit 1" (Alfred Depo) at 10:14-
5	believe that the suspect poses a	11:22.
6	significant threat of death or serious	Disputed to the extent that Deputy
7	bodily injury to the deputy of	Alfred had ample time and room to
8	others."	move out of the path of the
9	Ex. L at COSB000676.	Trailblazer rather than shooting.
10		Morales Decl. at ¶ 7; DeFoe Decl. at
11		¶ 9.
12		Disputed to the extent that the time
13		of the shooting, Deputy Alfred had
14		no information that Mr. Barber had
15		ever physically injured anyone.
16		"Exhibit 1" (Alfred Depo) at 30:18-
17		20.
18	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
19	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
20	R. Civ. P. 56(c). Defendant also objects because Morales is a mechanical engineer	
21	and is both not qualified to make this conclusion and this conclusion is the result of	
22	the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i>	
23	Fed.R.Civ.Pro. 56; FRE 702. Defendant further objects because DeFoe's conclusion	
24	is the result of the unreliable application of the facts, ignoring direct evidence to the	
25	contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and	
26	704.	
27	64 The San Bernardino County Sheriff's	Undisputed that this is the County
28	Department Manuel provides that	Policy.
	"[f]irearms should not be discharged	
	from or at a moving vehicle except	
	in exigent circumstances. In these	Disputed to the extent that at the time
	situations, a safety member must	of this incident, Deputy Alfred

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<p>have articulable reason(s) for this use of lethal force, which include, but are not limited to ... [t]he vehicle is operated in a manner which is likely to result in great bodily injury or death to a safety member or another person, and other reasonable means of defense have been exhausted, or are not available or practical. This may include, if time and circumstances allow, moving out of the path of the vehicle.”</p> <p>Ex. L at COSB000677-8.</p>	<p>understood that the County of San Bernardino’s policy directed that deputies “shall not” shoot at a moving vehicle.</p> <p>“Exhibit 1” (Alfred Depo) at 10:14-11:22.</p> <p>Disputed to the extent that police officers are trained that a threat of death or serious injury is imminent when, based upon the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.</p> <p>DeFoe Decl. at ¶ 6(c) (citing PC 835a); “Exhibit 1” (Alfred Depo) at 91:4-13.</p> <p>Disputed to the extent that police standards instruct that subjective fear alone does not justify the use of deadly force. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that from appearances, must be instantly confronted and addressed.</p> <p>DeFoe Decl. at ¶ 6(d).</p>
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**Defendants’ Response:** Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c). Defendant further objects because DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. *See* Fed.R.Civ.Pro. 56; FRE 702 and 704.

65	Alfred’s understanding of training is if feasible, step out of the way, rather than shooting at the vehicle.  Ex. A at p. 48:20-25	Disputed to the extent that at the time of this incident, Deputy Alfred understood that the County of San Bernardino’s policy directed that deputies “shall not” shoot at a moving vehicle. “Exhibit 1” (Alfred Depo) at 10:14-11:22.  Otherwise, undisputed.
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**Defendants’ Response:** Defendants object to Plaintiffs’ dispute because the material cited do not establish the absence or presence of a genuine dispute. *See* Fed. R. Civ. P. 56(c).

66	Deputy Alfred was approximately 10 to 15 feet behind Plaintiff’s vehicle as he fired the shots.  Ex. A at p. 14:5-7; 15:1216:1.	Disputed.  At the time of the first shot, Deputy Alfred was approximately 51 feet to the rear of the Trailblazer. Morales Decl. at ¶ 16.  At the time of the last shot, Deputy Alfred was approximately 21 feet to the rear of the Trailblazer. Morales Decl. at ¶ 16.  Disputed to the extent that Deputy Alfred had ample time and room to move out of the path of the Trailblazer rather than shooting.
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1		Morales Decl. at ¶ 7; DeFoe Decl. at
2		¶ 9.
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4	<b>Defendants' Response:</b> Defendants object to Plaintiffs' dispute because the	
5	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
6	R. Civ. P. 56(c). Defendant also objects because Morales is a mechanical engineer	
7	and is both not qualified to make this conclusion and this conclusion is the result of	
8	the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i>	
9	Fed.R.Civ.Pro. 56; FRE 702. Defendant further objects because DeFoe's conclusion	
10	is the result of the unreliable application of the facts, ignoring direct evidence to the	
11	contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and	
12	67	Objections: Vague as to time.
13	Deputy Alfred observed movements	Disputed.
14	consistent with someone who's	
15	armed with a firearm.	
16	Ex. A at p. 13:10	The reporting party did not report
17		that they saw Mr. Barber with a
18		weapon or that Mr. Barber said he
19		had a weapon. "Exhibit 1" (Alfred
20		Depo) at 31:12-18.
21		Deputy Alfred never saw a gun or
22		other weapon either on Mr. Barber or
23		in the Trailblazer at any time.
24		"Exhibit 1" (Alfred Depo) at 13:7-
25		18.
26		Based on Deputy Alfred's
27		experience, a reporting party might
28		state that a person has a gun in order
		to expedite law enforcement
		response, and then it often turns out
		that the person did not have a gun.



1		“Exhibit 1” (Alfred Depo) at 34:1-7.
2	<b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the	
3	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
4	R. Civ. P. 56(c).	
5	68	Plaintiff did not attend therapy or
6		counseling. or take any medication
7		for any mental or emotional types of
8		injuries.
9		Ex. G at 65:1-6; 65:23-66:7
10		Disputed to the extent that there is no
11		evidence that Mr. Barber had the
12		opportunity to attend therapy or
13		counseling or take any medication
14		for any mental or emotional types of
15		injuries, given that he has
16		incarcerated after the shooting.
17	<b>Defendants’ Response:</b> Defendants object to Plaintiffs’ dispute because the	
18	material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed.	
19	R. Civ. P. 56(c).	

Plaintiff’s Statement of Additional Material Facts			
Pl.’s No.	Fact	Supporting Evidence	Defendant’s Response
69	Deputy Alfred had never seen Mr. Barber prior to this incident and had no specific information about him.	“Exhibit 1” (Alfred Depo) at 29:20-24, 30:11-17.	Undisputed.
70	At the time of the shooting, Deputy Alfred had no information that Mr. Barber had ever physically injured anyone.	“Exhibit 1” (Alfred Depo) at 30:18-20	Undisputed.

71	The reporting party did not report that they saw Mr. Barber with a weapon or that Mr. Barber said he had a weapon.	Exhibit 1” (Alfred Depo) at 31:12-18.	Undisputed.
72	Deputy Alfred never saw a gun or other weapon either on Mr. Barber or in the Trailblazer at any time.	“Exhibit 1” (Alfred Depo) at 13:7-18.	Undisputed.
73	Based on Deputy Alfred’s experience, a reporting party might state that a person has a gun in order to expedite law enforcement response, and then it often turns out that the person did not have a gun.	“Exhibit 1” (Alfred Depo) at 34:1-7.	Undisputed.
74	Deputy Alfred did not have any information that Mr. Barber was under the influence of drugs or alcohol.	“Exhibit 1” (Alfred Depo) at 31:23-25.	Undisputed.

75	Deputy Alfred knew that Mr. Barber was in his own driveway.	“Exhibit 1” (Alfred Depo) at 32:11-17.	Undisputed.
76	The driveway width was approximately 15 feet and 7 inches at the north end and 13 feet and 8 inches at the south end.	DeFoe Decl. at ¶ 9(e); Morales Decl. at ¶ 7.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.
77	During this incident, Deputy Alfred was armed with a Taser, a police baton, and OC spray.	“Exhibit 1” (Alfred Depo) at 26:17-23.	Undisputed.
78	During this incident, Deputy Alfred had a flashlight that provided	“Exhibit 1” (Alfred Depo) at 15:1-11.	Undisputed.

1		some illumination.		
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5	79	Deputy Alfred was the	“Exhibit 1”	Undisputed.
6		starting point guard of his	(Alfred Depo) at	
7		varsity high school	22:11-19.	
8		basketball team.		
9				
10	<b><i>The Shooting</i></b>			
11	80	When Deputy Alfred was	“Exhibit 2”	<b>Objection.</b> This
12		attempting to contact Mr.	(Barber Depo) at	additional fact is
13		Barber in his driveway	42:6-43:9, 48:13-	immaterial and irrelevant
14		prior to the shooting, Mr.	19.	to whether the force was
15		Barber could not see		justified under the
16		Deputy Alfred.		totality of the
17				circumstances.
18				Fed.R.Evid. Rules 401,
19				402, 403; <i>Graham v.</i>
20				<i>Connor</i> , 490 U.S. 386
21				(1989); The Ninth
22				Circuit Manual of Model
23				Jury Instruction 9.25,
24				Unreasonable Seizure of
25				Person (Excessive Force)
26				pursuant to 42 U.S.C. §
27				1983.
28				Plaintiff was convicted
				with California Penal
				Code section 245(a)(1)
				which necessarily found
				that Plaintiff reversed

			his vehicle into Deputy Alfred knowing that Deputy Alfred was behind his vehicle.  Ex. H; Ex. K.
81	Mr. Barber heard a voice but did not see anyone in the driveway.	“Exhibit 2” (Barber Depo) at 42:6-43:8, 44:19-45:5.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Plaintiff was convicted with California Penal Code section 245(a)(1) which necessarily found that Plaintiff reversed his vehicle into Deputy Alfred knowing that Deputy Alfred was behind his vehicle.  Ex. H; Ex. K.

82	When Barber heard Deputy Alfred’s voice, he thought it was his neighbor speaking.	“Exhibit 2” (Barber Depo) at 35:10-20.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Plaintiff was convicted with California Penal Code section 245(a)(1) which necessarily found that Plaintiff reversed his vehicle into Deputy Alfred knowing that Deputy Alfred was behind his vehicle.  Ex. H; Ex. K.
83	Prior to firing his shots, Deputy Alfred formed the impression that Mr. Barber’s vehicle was on and that Mr. Barber	“Exhibit 1” (Alfred Depo) at 36:19-21, 40:10-22, 74:1-13.	Undisputed.

1		wanted to leave.		
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4	84	The Trailblazer was	Morales Decl. at ¶	<b>Objection.</b> This
5		parked on a low- friction	10.	additional fact is
6		surface consisting of dirt		immaterial and irrelevant
7		and gravel.		to whether the force was
8				justified under the
9				totality of the
10				circumstances.
11				Fed.R.Evid. Rules 401,
12				402, 403; <i>Graham v.</i>
13				<i>Connor</i> , 490 U.S. 386
14				(1989); The Ninth
15				Circuit Manual of Model
16				Jury Instruction 9.25,
17				Unreasonable Seizure of
18				Person (Excessive Force)
19				pursuant to 42 U.S.C. §
20				1983.
21				Furthermore, Morales is
22				a mechanical engineer
23				and is both not qualified
24				to make this conclusion
25				and this conclusion is the
26				result of the unreliable
27				application of the facts,
28				ignoring direct evidence
				to the contrary. <i>See</i>
				Fed.R.Civ.Pro. 56; FRE
				702.
	85	The Trailblazer could not	Morales Decl. at ¶	<b>Objection:</b> This
		have moved as soon as the	10.	additional fact is

1	accelerator was engaged		immaterial and irrelevant
2	because the rear tires		to whether the force was
3	experienced a loss of		justified under the
4	traction, and the front tires		totality of the
5	had to overcome static		circumstances.
6	friction. The surface		Fed.R.Evid. Rules 401,
7	composition created a		402, 403; <i>Graham v.</i>
8	mechanical limitation that		<i>Connor</i> , 490 U.S. 386
9	prevented rapid		(1989); The Ninth
10	acceleration and restricted		Circuit Manual of Model
11	maximum achievable		Jury Instruction 9.25,
12	speeds, regardless of		Unreasonable Seizure of
13	accelerator input.		Person (Excessive Force)
14			pursuant to 42 U.S.C. §
15			1983.
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17			Furthermore, Morales is
18			a mechanical engineer
19			and is both not qualified
20			to make this conclusion
21			and this conclusion is the
22			result of the unreliable
23			application of the facts,
24			ignoring direct evidence
25			to the contrary. <i>See</i>
26			Fed.R.Civ.Pro. 56; FRE
27			702.
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86	Deputy Alfred was not struck by any gravel or dirt from the tires prior to the shooting.	“Exhibit 1” (Alfred Depo) at 68.	Undisputed.



1	87	Deputy Alfred intentionally fired six shots at Mr. Barber with the intent of striking him.	“Exhibit 1” (Alfred Depo) at 16:12-19, 17:7-16.	Undisputed.
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6	88	At the time of the shooting, it was not the case that any person was about to be run over by the Trailblazer with no opportunity to get out of the way.	DeFoe Decl. at ¶ 9.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.  Ex. A at p. 49.
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			<p>Ex. C</p> <p>Ex. G at p. 47:4-15; 48:17-22</p> <p>Ex. 2 to Ex. A.</p> <p>Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A</p>
89	Deputy Alfred had ample time and room to move out of the path of the Trailblazer rather than shooting.	Morales Decl. at ¶ 7; DeFoe Decl. at ¶ 9.	<p><b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances.</p> <p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702. DeFoe’s conclusion</p>

			<p>is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p> <p>Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A</p>
90	At the time of the shooting, Deputy Alfred had approximately two to four feet between the left side of his body and the chain link fence to his left.	DeFoe Decl. at ¶ 9(f); “Exhibit 1” (Alfred Depo) at 18:8-22; “Exhibit 3” (scene photo).	Undisputed.
91	When the Trailblazer rolled backwards, it did so in a straight line. The resting position of the vehicle after the incident shows that the wheels are straight, meaning that Mr. Barber never changed the	“Exhibit 1” (Alfred Depo) at 61:19-22; Morales Decl. at ¶ 13.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401,

1		direction of the vehicle.		402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.
2				This misstates the testimony of Deputy Alfred:
3				“Q: When the vehicle was backing up, could you tell if it was backing straight up or slightly at an angle, one way or another
4				A: It appeared to be straight backwards.”
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18	92	Deputy Alfred failed to give Mr. Barber a verbal warning that he was prepared to use deadly force before shooting.	DeFoe Decl. at ¶ 9(c); “Exhibit 1” (Alfred Depo) at 13:19-21.	Undisputed.
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24	93	When Deputy Alfred fired his first shot, the Trailblazer was either not in motion or was moving at a slow speed of under	Morales Decl. at ¶ 11.	<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the
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	one mile per hour.		<p>totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702. Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A</p>
94	At the time of the first	Morales Decl. at	<b>Objection:</b> This

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shot, the Trailblazer had moved backwards less than one foot.	¶ 11.	<p>additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances.</p> <p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702.</p> <p>Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A.</p>
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			Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A
95	At the time of the second shot, the Trailblazer still had not traveled backwards more than one foot.	Morales Decl. at ¶ 11.	<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702.

			Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A
96	At the time of the last shot, the vehicle had started decelerating and was moving at approximately under one mile per hour before coming to rest.	Morales Decl. at ¶ 11.	<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct



			evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702. Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A
97	At the time of the first shot, Deputy Alfred was approximately 51 feet to the rear of the Trailblazer.	Morales Decl. at ¶ 16.	<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his

			<p>conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702.</p> <p>Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A</p>
98	At the time of the last shot, Deputy Alfred was approximately 21 feet to the rear of the Trailblazer.	Morales Decl. at ¶ 16.	<p><b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, Morales</p>

			<p>is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702.</p> <p>Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A</p>
99	Deputy Alfred was in motion and advancing toward the Trailblazer during the shooting sequence, at a pace faster than normal human walking pace.	Morales Decl. at ¶ 19.	<p><b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances.</p> <p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of</p>

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			<p>Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702.</p> <p>Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A Ex. A at p. 14:5-7; 15:12-16:1. Ex. A at p. 40:23-25.</p>
100	<p>The vehicle came to a stop because Mr. Barber stepped on the brakes. The evidence indicates that Mr. Barber applied</p>	<p>Morales Decl. at ¶ 15.</p>	<p><b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the</p>

1	the brakes mildly, as		totality of the
2	opposed to slamming on		circumstances.
3	the brakes. The vehicle		Fed.R.Evid. Rules 401,
4	gradually decelerated		402, 403; <i>Graham v.</i>
5	after the brakes were		<i>Connor</i> , 490 U.S. 386
6	pressed while remaining		(1989); The Ninth
7	in reverse gear.		Circuit Manual of Model
8			Jury Instruction 9.25,
9			Unreasonable Seizure of
10			Person (Excessive Force)
11			pursuant to 42 U.S.C. §
12			1983.
13			
14			Furthermore, Morales
15			is a mechanical
16			engineer and is both
17			not qualified to make
18			this conclusion and his
19			conclusion is the result
20			of the unreliable
21			application of the
22			facts, ignoring direct
23			evidence to the
24			contrary. <i>See</i>
25			Fed.R.Civ.Pro. 56;
26			FRE 702.
27			
28			
101	The maximum speed the Trailblazer reached during the six shots was approximately 3.4 miles per hour.	Morales Decl. at ¶ 14.	<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401,

1			402, 403; <i>Graham v.</i>
2			<i>Connor</i> , 490 U.S. 386
3			(1989); The Ninth
4			Circuit Manual of Model
5			Jury Instruction 9.25,
6			Unreasonable Seizure of
7			Person (Excessive Force)
8			pursuant to 42 U.S.C. §
9			1983.
10			Furthermore, Morales is
11			a mechanical engineer
12			and is both not qualified
13			to make this conclusion
14			and his conclusion is the
15			result of the unreliable
16			application of the facts,
17			ignoring direct evidence
18			to the contrary. <i>See</i>
19			Fed.R.Civ.Pro. 56; FRE
20			702.
21	102	Based on standard biomechanical data, the average human walking speed ranges from 3.0 to 3.5 miles per hour, meaning the vehicle's maximum speed was equivalent to or slightly faster than a person walking at normal pace.	Morales Decl. at ¶ 14.
22			<b>Objection:</b> This
23			additional fact is
24			immaterial and irrelevant
25			to whether the force was
26			justified under the
27			totality of the
28			circumstances.
			Fed.R.Evid. Rules 401,
			402, 403; <i>Graham v.</i>
			<i>Connor</i> , 490 U.S. 386
			(1989); The Ninth
			Circuit Manual of Model
			Jury Instruction 9.25,
			Unreasonable Seizure of

			<p>Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702.</p>
103	Deputy Alfred never had to dive out of the way of the Trailblazer.	“Exhibit 1” (Alfred Depo) at 48:17-19.	<p><b>Objection.</b> This misstates Deputy Alfred’s testimony, which is, as follows:</p> <p>“Q: And you didn’t, for example, dive out of the way; is that also correct? A: That is correct.”</p>
104	Deputy Alfred was not struck by the Trailblazer.	“Exhibit 1” (Alfred Depo) at 48:14-16.	Undisputed.
105	After the shooting, Mr. Barber’s foot was on the brake pedal.	“Exhibit 1” (Alfred Depo) at 53:24-54:3.	Undisputed.

106	When the deputies were removing Mr. Barber from the Trailblazer after the shooting, the Trailblazer moved backwards an additional two to three feet.	Morales Decl. at ¶ 20.	Undisputed.
<b><i>Pre-Shooting Negligence</i></b>			<b>Objection</b> to the as to the Characterization of this section as “Negligence”
107	Police officers are expected to follow their own department policies.	DeFoe Decl. at ¶ 7.	<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Furthermore, DeFoe’s conclusion is the result of the unreliable



			application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.
108	Deputy Alfred used profanity with Mr. Barber during this incident.	“Exhibit 1” (Alfred Depo) at 38:7-19.	Undisputed.
109	Deputy Alfred did not request backup before attempting to make contact with Mr. Barber.	“Exhibit 1” (Alfred Depo) at 33:4-6.	Undisputed.
110	Prior to the shooting, Deputy Alfred did not identify himself as a police officer.	“Exhibit 1” (Alfred Depo) at 38:20-22.	Undisputed.
111.	After seeing the reverse lights come on, Deputy Alfred failed to step out of the way.	“Exhibit 1” (Alfred Depo) at 41:1-3, 49:8-50:2.	<b>Objection.</b> The testimony of Deputy Alfred does not include the word fail.  “Q: Did you then move to step out of the way once you saw the

1			reverse lights come on? A: No.”
2			.
3	112	Deputy Alfred did not attempt to move out of the way to the left or to the right before he fired the shots.	“Exhibit 1” (Alfred Depo) at 48:2-5.
4			Undisputed.
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8	113	A reasonable officer in Deputy Alfred’s position would have moved to a position of cover and formulated an effective and safe tactical plan.	DeFoe Decl. at ¶ 10(c).
9			<b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.
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28			Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE

			702 and 704.
<b><i>Police Officer Training and Standards</i></b>			
114	Basic police officer training teaches that shooting at a moving vehicle has shown to be a poor tactic in most scenarios. If a driver is wounded or killed when operating a motor vehicle, it prevents their ability to effectively operate a motor vehicle.	DeFoe Decl. at ¶ 7.	<p><b>Objection:</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p>
115	An assaultive motor vehicle does not presumptively justify the	DeFoe Decl. at ¶ 7.	<b>Objection.</b> This additional fact is immaterial and irrelevant

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use of deadly force.		<p>to whether the force was justified under the totality of the circumstances.</p> <p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p> <p>Paragraph 7 of the DeFoe Declaration states:</p> <p>Standards Surrounding Shooting at Moving Vehicles</p> <p>San Bernardino County Sheriff’s Department Manual, Policy 3.608,</p>
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			<p>The Use of Lethal Force, states as follows: Firearms should not be discharged from or at a moving vehicle except in exigent circumstances. In these situations, a safety member must have articulable reason(s) for this use of lethal force, which include, but are not limited to the following: [1] A person in the vehicle is threatening the safety member or another person with lethal force by means other than the vehicle; or [2] The vehicle is operated in a manner which is likely to result in great bodily injury or death to a safety member or another person, and other reasonable means of defense have been exhausted, or are not available or practical. This may include, if time and circumstances allow, moving out of the path of the vehicle.</p>
116	At the time of this	“Exhibit 1”	Undisputed.

	incident, Deputy Alfred understood that the County of San Bernardino's policy directed that deputies "shall not" shoot at a moving vehicle.	(Alfred Depo) at 10:14-11:22.	
117	At the time of this incident, Deputy Alfred had been trained to get out of the path of a moving vehicle, if feasible, rather than shooting at it.	"Exhibit 1" (Alfred Depo) at 10:14-11:22.	Undisputed.
118	At the time of this incident, Deputy Alfred had been trained not to tactically position himself in a bad spot, if he can avoid it, with respect to moving vehicles.	"Exhibit 1" (Alfred Depo) at 11:17-22.	Undisputed.
119	Under the facts of this case and pursuant to police standards and training, it would have been inappropriate for Deputy Alfred to shoot at Mr. Barber for fleeing or attempting to flee. Police officers are trained that a police officer cannot justify shooting a vehicle	DeFoe Decl. at ¶ 8.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth

1		or its driver simply		Circuit Manual of Model
2		because that vehicle was		Jury Instruction 9.25,
3		fleeing or trying to leave		Unreasonable Seizure of
4		the area.		Person (Excessive Force)
5				pursuant to 42 U.S.C. §
6				1983.
7				Furthermore, DeFoe's
8				conclusion is the result
9				of the unreliable
10				application of the facts,
11				ignoring direct evidence
12				to the contrary and
13				invades the province of
14				the jury. <i>See</i>
15				Fed.R.Civ.Pro. 56; FRE
16				702 and 704.
17	120	Basic police training and	"Exhibit 1"	<b>Objection.</b> This
18		standards instruct that	(Alfred Depo) at	additional fact is
19		deadly force should only	41:24-42:2,	immaterial and irrelevant
20		be used on the basis of an	43:13-18; DeFoe	to whether the force was
21		"objectively reasonable"	Decl. at ¶ 6(d).	justified under the
22		belief that the suspect		totality of the
23		poses an immediate threat		circumstances.
24		of death or serious bodily		Fed.R.Evid. Rules 401,
25		injury.		402, 403; <i>Graham v.</i>
26				<i>Connor</i> , 490 U.S. 386
27				(1989); The Ninth
28				Circuit Manual of Model
				Jury Instruction 9.25,
				Unreasonable Seizure of
				Person (Excessive Force)
				pursuant to 42 U.S.C. §
				1983.

			Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.
121	Police officers are trained that a threat of death or serious injury is imminent when, based upon the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.	DeFoe Decl. at ¶ 6(c) (citing PC 835a); “Exhibit 1” (Alfred Depo) at 91:4-13.	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence



			to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.
122	Police standards instruct that subjective fear alone does not justify the use of deadly force. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that from appearances, must be instantly confronted and addressed.	DeFoe Decl. at ¶ 6(d).	<p><b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p>

123	Police officers are trained that deadly force should only be used when no reasonable alternative measures are available.	DeFoe Decl. at ¶ 6(i).	<p><b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances.</p> <p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p>
124	Police officers are trained to give a verbal warning prior to using deadly force.	DeFoe Decl. at ¶ 6(j).	<p><b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances.</p>

			<p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe's conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p>
125	Basic police training teaches that an overreaction in using deadly force is excessive force.	DeFoe Decl. at ¶ 6(h).	<p><b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances.</p> <p>Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25,</p>

			<p>Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe's conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p>
126	<p>Deputy Alfred violated basic police officer training and standards with respect to the use of deadly force when he shot Mr. Barber while Mr. Barber occupied the driver seat of a vehicle. A reasonable officer acting consistent with standard police practices would not have used lethal force in this situation. Mr. Barber did not pose an immediate threat of death or serious bodily injury to Deputy Alfred or to any other person at the time of the shots. At the time of the shooting, it was not the</p>	DeFoe Decl. at ¶ 9	<p><b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe's conclusion is the result</p>

1		case that any person was		of the unreliable
2		about to be run over by		application of the facts,
3		the vehicle with no		ignoring direct evidence
4		opportunity to get out of		to the contrary and
5		the way.		invades the province of
6				the jury. <i>See</i>
7				Fed.R.Civ.Pro. 56; FRE
8	127	From the standpoint of	DeFoe Decl. at ¶	<b>Objection.</b> This
9		police practices, including	11.	additional fact is
10		basic police training,		immaterial and irrelevant
11		POST standards, and the		to whether the force was
12		County of San		justified under the
13		Bernardino's own		totality of the
14		policies, Deputy Alfred's		circumstances.
15		use of deadly force was		Fed.R.Evid. Rules 401,
16		improper, inappropriate,		402, 403; <i>Graham v.</i>
17		excessive and		<i>Connor</i> , 490 U.S. 386
18		unreasonable, including		(1989); The Ninth
19		(but not limited to) for the		Circuit Manual of Model
20		following reasons: (1) this		Jury Instruction 9.25,
21		was not an immediate		Unreasonable Seizure of
22		defense of life situation;		Person (Excessive Force)
23		(2) subjective fear is		pursuant to 42 U.S.C. §
24		insufficient to justify a		1983.
25		use of deadly force; (3)		
26		the shooting violated		Furthermore, DeFoe's
27		basic police training; (4)		conclusion is the result
28		Mr. Barber committed no		of the unreliable
		crime involving the		application of the facts,
		infliction of serious injury		ignoring direct evidence
		or death; (5) Deputy		to the contrary and
		Alfred could not justify		invades the province of
		shooting Mr. Barber		the jury. <i>See</i>
		under a fleeing felon		Fed.R.Civ.Pro. 56; FRE

1	theory; (6) Mr. Barber		702 and 704.
2	was not armed with a gun		
3	or other weapon during		
4	this incident; (7) Mr.		
5	Barber never verbally		
6	threatened to harm		
7	Deputy Alfred; (8)		
8	Deputy Alfred had		
9	reasonable alternative		
10	measures other than		
11	shooting; (9) Deputy		
12	Alfred showed no		
13	reverence for human life		
14	when he fired at Mr.		
15	Barber; (10) police		
16	officers are trained that		
17	they must justify every		
18	shot they fire, and all six		
19	of Deputy Alfred's shots		
20	were unjustified.		
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<b>Monell</b>			
128	Contrary to basic police training, Deputy Alfred testified that he has not been trained to give a verbal warning prior to using deadly force.	"Exhibit 1" (Alfred Depo) at 90:7-9; DeFoe Decl. at ¶ 6(j).	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25,

			<p>Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.</p>
129	<p>Contrary to basic police training, Deputy Alfred testified that he has not been trained that deadly force should only be used if there is an immediate threat of death or serious bodily injury.</p>	<p>“Exhibit 1” (Alfred Depo) at 89:23-90:1; DeFoe Decl. at ¶ 6(b).</p>	<p><b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i>, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.</p> <p>Furthermore, DeFoe’s conclusion is the result</p>

			of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704.
130	Contrary to basic police training, Deputy Alfred testified that he has not been trained that deadly force should only be used where there are no other reasonable options.	“Exhibit 1” (Alfred Depo) at 90:7-9; DeFoe Decl. at ¶ 6(i).	<b>Objection.</b> This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983.  Furthermore, DeFoe’s conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE



			702 and 704.
131	Alfred also testified that at the time of the incident, he understood that the County’s policy directed that deputies “shall not” shoot at a moving vehicle, and that after the April 2021 shooting of Barber, the verbiage of the policy changed from “shall not” to “generally.”	“Exhibit 1” (Alfred Depo) at 11:9-13:6.	<b>Objection.</b> Plaintiff is barred from using the change in the policy as evidence of the Defendants’ liability (FRE 407.)
132	Deputy Alfred’s interview in this case was not conducted until approximately two weeks after the shooting.	“Exhibit 1” (Alfred Depo) at 6:16-25.	Undisputed.

DATED: October 30, 2025

Respectfully submitted,

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